



PATENT  
Customer No. 22,852  
Attorney Docket No. 05725.0598-01

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of: )  
Valérie de la Poterie et al. )  
Application No.: 10/773,258 ) Group Art Unit: 1615  
Filed: February 9, 2004 ) Examiner: L. Channavajjala  
For: MASCARA COMPRISING A )  
POLYMER DISPERSED IN A )  
LIQUID FATTY PHASE )

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

**DECLARATION UNDER 37 C.F.R. § 1.132**

I, Stephane ARDITTY, declare and state that:

1. I am a French citizen, residing at, 4, Résidence Clos du Chateau, 91160 Ballainvilliers, France.
2. I have been awarded a PhD degree in Chemistry from University Bordeaux 1 on September 28, 2004.
3. I have been employed by L'ORÉAL since October 4, 2004, and I am presently employed as Applied Research engineer at L'ORÉAL. During my employment at L'ORÉAL, I have been engaged in the research and development of cosmetic products.

4. I am familiar with the subject matter of U.S. Patent Application 10/773,258 to Valérie de la Poterie et al.

5. Given my education and experience, particularly in the area of eye makeup, I consider myself able to provide the following testimony based on experiments conducted by me or under my direct supervision.

#### **COMPARATIVE TESTING**

6. The following comparative tests were performed to measure the viscosity of a composition from U.S. Patent No. 5,851,517 ("the '517 patent"), except that heptane (that is taught in the '517 patent) was replaced with isododecane.

7. Example 1 from the '517 patent was reproduced except that heptane was replaced with isododecane. The viscosity of this composition having a solids content of 24.5%, compared to 25% for Example 1 of the '517 patent, was compared to the claimed viscosity ranges.

#### **Evaluation and Results**

8. The viscosity of each composition was measured at 25°C using a Rheometre Haake RheoStress 600 viscometer sold by the company Thermo Electron Corporation, equipped with a cone – plate geometry with a diameter of 60 mm and a 2° angle, at a shear rate of 200 s<sup>-1</sup>, the measurement being made after shearing in these conditions for 10 minutes.

9. The results on the comparative composition showed a viscosity of 0.189 Pa·s. In contrast, claim 1 of the instant application recites a viscosity range from 2 Pa·s to 17 Pa·s. In addition, claim 3 recites a viscosity range from 5 Pa·s to 13 Pa·s.

### CONCLUSION

10. The results show that the viscosity of the comparative example according to the '517 patent containing heptane falls well below the ranges claimed in the instant application.

11. I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further, that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Dated: 17 of august 2005

Signature: \_\_\_\_\_

By: ARDITTY stephane